Supreme Court, U.S.
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IN THE

Supreme Court of the United States

PETER BALOGUN,

PETITIONER,

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL,

RESPONDENT.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Whether the term "victim" as used in section 101(a)(43)(M)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(M)(i), includes the Government since the term "victim" ordinarily refers to a person, a term which, under the Dictionary Act, 1 U.S.C. § 1, U.S. Supreme Court precedent, and decisions of the Eleventh Circuit and its sister circuits, does not include the sovereign, unless there is an affirmative showing to the contrary?

B. Whether the court below erred by holding that the "pardon waiver" codified at section 237(a)(2)(A)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(v), can never be effective in inadmissibility proceedings despite the fact that such a holding ignored over fifty years of agency precedent and violated petitioner's right to equal protection of the laws under the Fifth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDINGS
AND
CORPORATE DISCLOSURE STATEMENT

The parties involved in this proceeding are listed on the cover.

This petition is not being filed by or on behalf of a nongovernmental corporation.

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CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS OF DECISIONS AND ORDERS ENTERED BY COURTS AND ADMINISTRATIVE AGENCIES

The decision of the United States Court of Appeals for the Eleventh Circuit is reported at *Balogun v. U.S. Attorney General*, 425 F.3d 1356 (11th Cir. 2005) and is reproduced in the Appendix to this Petition.

The decision of the Board of Immigration Appeals denying Petitioner's Motion to Reopen his removal proceedings appears at pages 000001 to 000002 of the Administrative Record ("A.R.") and is reproduced in the Appendix to this Petition at pages A-15 to A-17.

The decision of the Board of Immigration Appeals dismissing Petitioner's appeal from the decision of the immigration judge appears at pages 000022 to 000023 of the Administrative Record and is reproduced in the Appendix to this Petition at pages A-18 to A-19.

The decision of the immigration judge ordering Petitioner's removal from the United States and denying him relief from removal appears at pages 000052 to 000058 of the Administrative Record and is reproduced in the Appendix to this Petition at pages A-20 to A-28.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Eleventh Circuit entered its decision on the merits of Petitioner's Petitions for Review filed with that court on September 26, 2005. Petitioner timely filed a Petition for Rehearing and Rehearing En Banc with the Eleventh Circuit, which it denied on December 20, 2005. The Eleventh Circuit's Mandate issued on December 29, 2005.

The Eleventh Circuit had jurisdiction to review the decisions of the Board of Immigration Appeals pursuant to section 106(a)(1)(A)(iii) of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 310 (May 11, 2005), codified at 8 U.S.C. § 1252(a)(2)(D). Because constitutional questions and questions of law are at issue in this matter, as opposed to issues of discretion, this Court, like the Eleventh Circuit, has jurisdiction to review Petitioner's case under section 106(a)(1)(A)(iii) of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 310 (May 11, 2005), codified at 8 U.S.C. § 1252(a)(2)(D). Section 1254 of Title 28 of the United States Code confers jurisdiction on this Court to hear Petitions for Writ of Certiorari from the decisions of the Courts of Appeal.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

Note: All authorities listed here have been reproduced in the Appendix.

Constitutional Provisions

U.S. Const. Amend. V

Statutes

Immigration and Nationality Act of 1952, as amended (codified at 8 U.S.C. §§ 1101 *et seq.*)

Section 101(a)(13) (codified at 8 U.S.C. § 1101(a)(13))

Section 101(a)(43)(M) (codified at 8 U.S.C. § 1101(a)(43)(M))

Section 212(a)(2)(A)(i) (codified at 8 U.S.C. § 1182(a)(2)(A)(i))

Section 212(h) (codified at 8 U.S.C. § 1182(h))

Section 237(a)(2)(A) (codified at 8 U.S.C. § 1227(a)(2)(A))

Decision of the Board of Immigration Appeals

Matter of H—, 6 I. & N. Dec. 90 (BIA 1954)

STATEMENT OF THE CASE

Dr. Peter Balogun came to the United States as a student in 1960. He came from Nigeria, where he was born. During the 1960s, Dr. Balogun took degrees from Cornell University and the Tuskegee Institute.

He is now 66 years old, and he has lived in the United States for more than 45 years of those 66 years.

In 1968, Dr. Balogun became a permanent resident of the United States. He has not naturalized as a United States, though he has been an active member of the communities in which he has lived in America. He helped black candidates get elected in Alabama during times in which that was still novel. He has supported the town of Tuskegee, Alabama, and the university that bears its name.

Dr. Balogun's family, consists of his three children, all of whom are United States citizens, and live in America. He is close to each of his children.

But in 1988, Dr. Balogun went to trial in the United States District Court for the Middle District of Alabama. He had been the director of the Macon County (Alabama) Community Action Committee, which ran the local, federally funded Head Start program. He was charged with numerous offenses, but, in the end, the jury found him guilty of only one count of embezzlement in violation of 18 U.S.C. § 641 and one count of conspiracy to embezzle in violation of 18 U.S.C. § 371.

While the precise amount involved in the embezzlement is in some dispute, it was, without question, greater than $ 10,000. There were no private parties victimized by the offense.

Following his conviction, he was sentenced to serve concurrent terms of 15 months in prison. He completed his sentence.

The State of Alabama's Board of Pardons and Paroles may "entertain petitions for pardon from convictions in the courts of the United States or of other States, if the petitioner is, at the time of application and at the time of consideration, a resident of Alabama." Alabama Board of Pardons and Paroles, Rules, Regulations, and Procedures, Article 8, section 3, *available at* http://paroles.state.al.us/alabpp/main/ALABPP%20MAIN.htm (last visited Feb. 20, 2006). In 1995, Dr. Balogun resided in Alabama and

he applied to the Alabama Board of Pardons and Paroles for a pardon for his 1988 federal conviction. In 1997, the Board of Pardons and Paroles pardoned Dr. Balogun. (*See Certificate of Pardon with Restoration of Civil and Political Rights* (Apr. 27, 1997), APPENDIX at A-47 to A-49, A.R. at 252). That pardon was limited in its scope. For example, it did not, by its terms, prohibit the conviction from being used to find Dr. Balogun to be a habitual felon or allow Dr. Balogun to possess a firearm.

In 2002, Dr. Balogun traveled briefly outside the United States. Upon his return on October 28, 2002, he was detained because the immigration authorities believed that his 1988 criminal conviction made him inadmissible. The immigration authorities issued Dr. Balogun a Notice to Appear (*See* APPENDIX at A-21, A.R. at 000104) on November 6, 2002. It charged him as being a inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act of 1952, as amended, which is codified at 8 U.S.C. § 1182(a)(2)(A)(i)(I). That section makes an alien who has been convicted of a crime involving moral turpitude inadmissible.

In removal proceedings before an Immigration Judge in Atlanta, Georgia, Dr. Balogun conceded that he was an alien seeking admission to the United States who was inadmissible because of his conviction for having committing a crime involving moral turpitude. As relief from removal, Dr. Balogun sought, *inter alia* termination of the removal proceedings so that he could apply for naturalization and a waiver of his inadmissibility grounds under section 212(h) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(h). The Immigration Judge pretermitted—that is, denied—his applications for relief from removal and ordered Dr. Balogun's removal to Nigeria. (*See Decision and Order of the Immigration Judge* (Apr. 1, 2003), APPENDIX at A-20 to A-28, A.R. at 52).

Dr. Balogun filed a timely administrative appeal of the Immigration Judge's order with the Board of Immigration Appeals. Before the Board of Immigration Appeals, Dr. Balogun argued that the Immigration Judge erred when he pretermitted Dr. Balogun's application for a waiver of his inadmissibility grounds under section 212(h) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(h). On April 20, 2004, the Board of Immigration Appeals dismissed Dr. Balogun's appeal. (*See Decision of the Board of Immigration Appeals* (Apr. 20, 2004), APPENDIX at A-18 to A-19,